

Brad Black, MD  
CEO and Medical Director  
Center for Asbestos Related Disease  
214 East 3rd Street  
Libby, Montana 59923

Dear Dr. Black:

This letter is in reply to your March 13, 2018 letter regarding the asbestos risk evaluation under the Toxic Substances Control Act (TSCA). First, I commend your commitment to public health and the caring treatment you provide your patients.

As you know, the U.S. Environmental Protection Agency (EPA) is extensively involved in Libby, Montana and has removed major sources of Libby Amphibole asbestos and/or mitigated the exposure pathways to many properties in and around Libby and Troy. The agency completed the last scheduled property cleanups located within Libby and Troy in November 2018. During this process, the EPA investigated 8,112 properties and completed cleanups at 2,611 properties. The EPA also developed guidance for consumers on how to manage vermiculite insulation<sup>1</sup> that may be contaminated with asbestos to help the public avoid exposure to asbestos.

That said, I understand your interest in continued EPA attention to the Libby Amphibole asbestos and its impacts on your community. Although the EPA has been actively engaged in Libby, I recognize that concerns remain and that the health consequences of asbestos exposure can be long lasting and severe.

In your letter, you expressed your concern about the exclusion of Libby Amphibole and legacy asbestos from the TSCA risk evaluation for asbestos. Section 6(b)(4) of TSCA requires the EPA to establish a risk evaluation process for existing chemicals, in which the EPA must “determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator under the conditions of use.” Section 3(4) of TSCA defines “conditions of use” as “the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.” The risk evaluations we are conducting under TSCA, including the one for asbestos,

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Deliberative Process (DP)**

**Ex. 5 Attorney Client (AC)**

**Ex. 5 Deliberative Process (DP)**

<sup>1</sup> This guidance is available at <https://www.epa.gov/asbestos/protect-your-family-asbestos-contaminated-vermiculite-insulation>.

## Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP) however, we may look to other means, whether within the EPA or elsewhere, to understand and, if necessary, address risks from ongoing exposure to legacy uses of chemicals.

Section 6(b)(1) of TSCA requires the EPA to establish a risk evaluation process for existing chemicals, in which the EPA must “determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator under the conditions of use.” Although vermiculite contaminated with Libby Amphibole asbestos remains in buildings as an insulating material, because it is no longer manufactured, processed, or distributed in commerce for use in the United States and is not reasonably foreseen to be, the EPA did not consider it as a condition of use of asbestos in the TSCA problem formulation and scoping document.

Ex. 5 Attorney Client (AC)

Ex. 5 Deliberative Process (DP)

Commented [BF5]: Is this accurate? This will help bolster the explanation for why it is not a condition of use.

## Ex. 5 Deliberative Process (DP)

Thank you for your letter. If you have further questions, please contact Tanya Hodge Mottley, Director of the National Program Chemicals Division, at 202-564-3152 or [mottley.tanya@epa.gov](mailto:mottley.tanya@epa.gov).

Sincerely,

Jeffery T. Morris, Ph.D.  
Director  
Office of Pollution Prevention and Toxics

Ex. 5 Deliberative Process (DP)

<sup>2</sup> The proposed rule may be found at <https://www.federalregister.gov/documents/2018/06/11/2018-12513/asbestos-significant-new-use-rule>.

Jan Ivers  
Chair  
Lincoln City-County Board of Health  
418 Mineral Ave.  
Libby, Montana 59923

Dear Ms. Ivers:

This letter is in reply to your March 15, 2018 letter regarding the asbestos risk evaluation under the Toxic Substances Control Act (TSCA). First, I commend your commitment to public health and the community of Libby, Montana.

As you know, the U.S. Environmental Protection Agency (EPA) is extensively involved in Libby, Montana and has removed major sources of Libby Amphibole asbestos and/or mitigated the exposure pathways to many properties in and around Libby and Troy. The agency completed the last scheduled property cleanups located within Libby and Troy in November 2018. During this process, the EPA investigated 8,112 properties and completed cleanups at 2,611 properties. The EPA also developed guidance for consumers on how to manage vermiculite insulation<sup>3</sup> that may be contaminated with asbestos to help the public avoid exposure to asbestos.

That said, I understand your interest in continued EPA attention to the Libby Amphibole asbestos and its impacts on your community. Although the EPA has been actively engaged in Libby, I recognize that concerns remain and that the health consequences of asbestos exposure can be long lasting and severe.

In your letter, you expressed your concern about the exclusion of Libby Amphibole and legacy asbestos from the TSCA risk evaluation for asbestos. Section 6(b)(4) of TSCA requires the EPA to establish a risk evaluation process for existing chemicals, in which the EPA must “determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator under the conditions of use.” Section 3(d) of TSCA defines “conditions of use” as “the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.” The risk evaluations we are conducting under TSCA, including the one for asbestos,

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## Ex. 5 Deliberative Process (DP)

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Commented [AS7]: Same comment

Commented [AS8]: Same comment

~~Section 6(b)(1) of TSCA requires the EPA to establish a risk evaluation process for existing chemicals, in which the EPA must “determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator under the conditions of use.”~~ Although vermiculite contaminated with Libby Amphibole asbestos remains in buildings as an insulating material, because it is no longer manufactured, processed, or distributed in commerce for use in the United States ~~and is not reasonably foreseen to be~~, the EPA did not consider it as a condition of use of asbestos in the TSCA problem formulation and scoping document.

Commented [BF9]: Is this accurate? This will help bolster the explanation for why it is not a condition of use.

## Ex. 5 Deliberative Process (DP)

Commented [AS10]: Same edits

Ex. 5 Deliberative Process (DP)

Thank you for your letter. If you have further questions, please contact Tanya Hodge Mottley, Director of the National Program Chemicals Division, at 202-564-3152 or [mottley.tanya@epa.gov](mailto:mottley.tanya@epa.gov).

Sincerely,

Jeffery T. Morris, Ph.D.  
Director  
Office of Pollution Prevention and Toxics

<sup>4</sup> The proposed rule may be found at <https://www.federalregister.gov/documents/2018/06/11/2018-12513/asbestos-significant-new-use-rule>.